

NEWMAYER & DILLION LLP

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Attorneys for Defendants
WALSH/DEMARIA JOINT VENTURE V, WALSH
CONSTRUCTION COMPANY, THE WALSH GROUP
LTD., and DEMARIA BUILDING COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE UNITED STATES OF AMERICA, for
the Use and Benefit of J.R. CONKEY &
ASSOCIATES, INC., a California
corporation; and J.R. CONKEY &
ASSOCIATES, INC., a California
corporation,

Plaintiff,

vs.

WALSH/DEMARIA JOINT VENTURE V,
an Illinois joint venture; WALSH
CONSTRUCTION COMPANY, AN Illinois
corporation; THE WALSH GROUP LTD., an
Illinois corporation; DEMARIA BUILDING
COMPANY, INC., a Michigan corporation;
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a Connecticut
corporation; and DOES 1 through 10

Defendants.

CASE NO.: 5:14-cv-03360-PSG

**STIPULATION TO RELATE CASES
AND CONTINUE CMC AND
~~PROPOSED~~ ORDER**

FILE DATE: July 24, 2014
TRIAL DATE SET: No Date Set

STIPULATION TO RELATE CASES

Defendants, Walsh/DeMaria Joint Venture V (“Walsh/DeMaria”), Walsh Construction
Company (“Walsh Construction”), The Walsh Group Ltd. (“Walsh Group”), DeMaria Building
Company, Inc. (“DeMaria Building”) (collectively “Walsh”), Travelers Casualty and Surety

Company of America (“Travelers”) and Liberty Mutual Insurance Company (“Liberty Mutual”) (collectively the “Sureties”), Plaintiffs, The United States of America, for the use and benefit of J.R. Conkey & Associates, Inc. and J.R. Conkey & Associates, Inc. (“Conkey”) and Plaintiff, The United States of America, for the use and benefit of Fought & Company, Inc. Fought & Company, Inc. (“Fought”) (all collectively referred to as the “Conkey and Fought Parties”), by and through their respective counsel of record herein, hereby stipulate and agree as follows:

RELATED ACTIONS

1. The Conkey Action.

WHEREAS, Plaintiff, J.R. Conkey, commenced an action entitled *J.R. Conkey v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-PSG (“Conkey Action”) by filing a complaint on or about July 24, 2014, in the United States District Court for the Northern District of California, including a cause of action for recovery on Miller Act Payment Bond, pursuant to 40 U.S.C. §§ 3131-3134, relating to monies allegedly owed for work performed at a Veterans Administration (“VA”) hospital in Palo Alto. Defendants, Walsh, filed a counter-claim against Conkey on or about December 8, 2014 in the Conkey Action, *inter alia*, for failing to defend and indemnify Walsh and its Sureties against the Fought Action and for breaching the Subcontract Agreement;

2. The Fought I Action.

WHEREAS, Plaintiff, Fought, commenced an action entitled *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-HRL (“Fought I Action”) by filing a complaint on or about September 30, 2014, in the United States District Court for the Northern District of California, including a Miller Act Payment Bond claim for relief, pursuant to 40 U.S.C. §§ 3131 et seq., relating to monies allegedly owed for work performed at a Veterans Administration hospital in Palo Alto. Defendants, Walsh, filed a cross-claim in the Fought Action against Conkey on or about December 9, 2014 asserting the same claims alleged in its counter-claim against Conkey in the Conkey Action; and

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1 3. The Fought II Action.

2 WHEREAS, Plaintiff, Fought, commenced an action entitled *Fought v. Walsh DeMaria*
 3 *Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-CV-05600-HRL (“Fought II Action”) by filing a
 4 complaint on or about December 23, 2014, in the United States District Court for the Northern
 5 District of California, including a Miller Act Payment Bond claim for relief, pursuant to 40
 6 U.S.C. §§ 3131 et seq., relating to monies allegedly owed for work performed at a Veterans
 7 Administration hospital in Palo Alto.

8 RELATIONSHIP OF THE ACTIONS

9 WHEREAS, Defendant Walsh/DeMaria entered into a contract (the “Prime Contract”)
 10 with the United States of America, Department of Veteran Affairs, for the construction of the VA
 11 Palo Alto Health Care System Capital Asset Improvements, Phase I, Contract No. VA101CFM-
 12 C-0168 (“the Project”), also known as the VA Hospital, Palo Alto Polytrauma Blind Rehab
 13 Center, 3801 Miranda Avenue, Palo Alto, CA;

14 WHEREAS, on or about October 7, 2011, Walsh/DeMaria entered into and executed a
 15 Payment Bond with Travelers, Travelers Bond No. 105669430, and its co-surety, Liberty Mutual,
 16 Liberty Mutual Bond No. 013124426, with Walsh as principal and Travelers and Liberty Mutual
 17 as Surety;

18 WHEREAS, on or about January 23, 2012, Walsh/DeMaria entered into a subcontract
 19 with Fought for certain labor and materials to be provided by Fought on the Project. This
 20 subcontract between Walsh/DeMaria and Fought concerns the Fought II Action;

21 WHEREAS, on or about February 3, 2012, Walsh/DeMaria entered into a written
 22 subcontract with Conkey for certain labor and materials to be provided by Conkey on the Project;
 23 and

24 WHEREAS, on or about October 17, 2012, Conkey entered into a sub-subcontract with
 25 Fought for certain labor, materials, and equipment on the Project. This sub-subcontract between
 26 Conkey and Fought concerns the Fought I Action.

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STATUS OF ACTIONS

WHEREAS, a continuance of the December 9, 2014 CMC in the Conkey Action was granted prior to the Conkey Action being deemed related to the Fought I Action;

WHEREAS, the Conkey Action and Fought I Action, including counter-claims and cross-claims, were deemed related on December 24, 2014 by stipulation and order (See Dkt. 56.);

WHEREAS, after the Conkey Action and Fought I Action were related, the Court on its own motion moved the originally scheduled Fought I CMC to January 20, 2015 (from the initially scheduled date of February 17, 2015);

WHEREAS, a mediator has been appointed in the Conkey Action, with a mediation scheduled to take place on or before February 17, 2015;

WHEREAS, mediation has not yet been ordered for the Fought I Action, but Fought is willing to attend the mediation in the Conkey Action by February 17, 2015, which is sooner than would otherwise be required pursuant to court rules;

WHEREAS, the Conkey and Fought Parties agree that Fought's attendance at the mediation in the Conkey Action will be productive and may result in a potential settlement of some, or all, of the issues in the Conkey Action, Fought I Action and/or Fought II Action; and

WHEREAS, the Conkey and Fought Parties agree that continuing the upcoming dates for the Conkey Action regarding the January 13, 2015 deadline for the parties' Rule 26(f) Report, initial disclosures and joint CMC statement, and the January 20, 2015 initial CMC will allow:

- (1) Fought to prepare for and attend mediation with all parties by February 17, 2015, which is an expedited basis for Fought;
- (2) the Conkey and Fought Parties to focus on mediation to attempt to resolve some, or all, of the outstanding issues between them; and
- (3) the three cases — the Conkey Action, Fought I Action, and Fought II Action — to proceed together if they do not settle at mediation, which will be more efficient and economical for the Court and the parties.

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CRITERIA FOR RELATED ACTIONS PER L.R. 3-12(a)

WHEREAS, Civil Local Rule 3-12 provides that actions are related when:

- (1) The actions concern substantially the same parties, property, transaction or event; and
- (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges;

WHEREAS, the actions concern substantially the same parties because Walsh, Travelers, Liberty Mutual and Fought are parties to the Fought I Action and the Fought II Action;

WHEREAS, the actions concern substantially the same transaction or event because the Fought I and Fought II Actions arise from work on the same Project in Palo Alto for the VA, concerning contracts between Walsh and the VA, and claims are being made under the same bonds issued by the same Sureties; ~

WHEREAS, there will be an unduly burdensome duplication of labor and expense and conflicting results if the cases are conducted before different judges because the payment issues are substantially the same in both cases and because they concern substantially the same parties, similar facts and the same law, as the claims in both actions are pursuant to the Miller Act;

WHEREAS, all Parties in the Conkey Action and Fought I Action agree that the Fought II Action should be related to the already related Conkey and Fought I Actions;

WHEREAS, the Conkey and Fought I Actions are the lowest numbered cases, such that if all the cases are related, the Fought II Action should be reassigned to Magistrate Judge Paul S. Grewal, who is assigned to the Conkey and Fought I Actions, pursuant to L.R. 3-12 (f)(3); and

WHEREAS, the Conkey and Fought Parties herein stipulate and seek an order relating the Fought II Action with the Conkey Action and Fought I Action, and continuing the January 20, 2015 CMC until after the mediation in the Conkey Action has taken place so that Fought may participate in the mediation.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE COUNSEL SIGNATORIES BELOW, ON BEHALF OF THEIR

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RESPECTIVE CLIENTS, AND THE PARTIES RESPECTFULLY REQUEST
THAT THE COURT ORDER THE FOLLOWING:

(1) That the related Conkey Action and Fought I Action, including counter-claims and cross-claims, should be related to the Fought II Action pursuant to L.R. 3-12 because the actions concern substantially the same parties, property, transaction or event and it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges;

(2) That the Clerk reassign the Fought II Action to Magistrate Judge Paul S. Grewal pursuant to L.R. 3-12 (f)(3);


(3) That Fought is ordered to attend the court ordered mediation in the Conkey Action for the Fought I and Fought II Actions, which is to take place before February 17, 2015; and

(4) That the January 20, 2015 CMC and related deadlines, including the Joint Case Management Statement, Rule 26(f) Report and Initial Disclosures for the Conkey and Fought I Actions, are continued to the initial CMC and related deadlines that will be set for the Fought II Action.

IT IS SO STIPULATED.

Dated: January 8, 2015

**MARKS, FINCH, THORNTON &
BAIRD, LLP**


David S. Demian
Jeffrey B. Baird
Christopher R. Sillari
Attorneys for Plaintiffs
THE UNITED STATES OF AMERICA, for
the Use and Benefit of J.R. CONKEY &
ASSOCIATES, INC., a California
corporation; and J.R. CONKEY &
ASSOCIATES, INC., a California
corporation

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NEWMAYER & DILLION LLP

1 Dated: January 8, 2015

HANSON BRIDGETT LLP



Robert W. O'Connor

John W. Klotsche

Attorneys for Plaintiffs

THE UNITED STATES OF AMERICA, for
the Use and Benefit of FOUGHT &
COMPANY, INC., an Oregon corporation;
and FOUGHT & COMPANY, INC., an
Oregon corporation,

7 Dated: January __, 2015

NEWMAYER & DILLION, LLP

J. Brian Morrow

Attorneys for Defendants

WALSH/DEMARIA JOINT VENTURE V,
WALSH CONSTRUCTION COMPANY,
THE WALSH GROUP LTD., and
DEMARIA BUILDING COMPANY, INC.

13 Dated: January __, 2015

CORFIELD FELD LLP

Michael A. Corfield

Natalie M. Kellogg

Attorneys for Travelers Casualty and Surety
Company of America and Liberty Mutual
Insurance Company

NEWMAYER & DILLON LLP

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Dated: January __, 2015

HANSON BRIDGETT LLP

Robert W. O'Connor
John W. Klotsche
Attorneys for Plaintiffs
THE UNITED STATES OF AMERICA, for
the Use and Benefit of FOUGHT &
COMPANY, INC., an Oregon corporation;
and FOUGHT & COMPANY, INC., an
Oregon corporation.

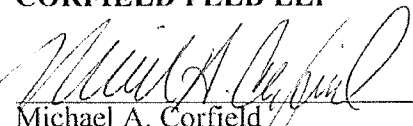
Dated: January 8, 2015

NEWMAYER & DILLION, LLP


J. Brian Morrow
Attorneys for Defendants
WALSH/DEMARIA JOINT VENTURE V,
WALSH CONSTRUCTION COMPANY,
THE WALSH GROUP LTD., and
DEMARIA BUILDING COMPANY, INC.

Dated: January 8, 2015

CORFIELD FELD LLP


Michael A. Corfield
Natalie M. Kellogg
Attorneys for Travelers Casualty and Surety
Company of America and Liberty Mutual
Insurance Company

PROPOSED ORDER

The foregoing Stipulation to Relate Cases, by Defendants, Walsh/DeMaria Joint Venture V, Walsh Construction Company, The Walsh Group Ltd., DeMaria Building Company, Inc., Travelers Casualty and Surety Company of America and Liberty Mutual Insurance Company, Plaintiffs, The United States of America, for the use and benefit of J.R. Conkey & Associates, Inc. and J.R. Conkey & Associates, Inc. and Plaintiff, The United States of America, for the use and benefit of Fought & Company, Inc. Fought & Company, Inc., has been submitted to the Court for consideration.

THE COURT, HAVING REVIEWED AND CONSIDERED THE FOREGOING STIPULATION, AND GOOD CAUSE APPEARING THEREFOR, HEREBY ORDERS:

(1) That the already related cases *J.R. Conkey v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-03360-PSG (“Conkey Action”) and *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-cv-04401-PSG (“Fought I Action”), including related counter-claims and cross-claims, are deemed related to *Fought v. Walsh DeMaria Joint Venture V. et al.* (N.D. Cal.) Case No. 5:14-CV-05600-HRL (“Fought II Action”), pursuant to L.R. 3-12 because the actions concern substantially the same parties, property, transaction or event and it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges;

(2) That the Clerk reassign the Fought II Action to Magistrate Judge Paul S. Grewal pursuant to L.R. 3-12 (f)(3).

(3) That Fought is ordered to attend the court ordered mediation in the Conkey Action for the Fought I and Fought II Actions, which is to take place before February 17, 2015; and

(4) That the January 20, 2015 CMC and related deadlines, including the Joint Case Management Statement, Rule 26(f) Report and Initial Disclosures for the Conkey and Fought I Actions, are continued to the initial CMC and related deadlines that will be set for the Fought II Action.

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Magistrate Judge Paul S. Grewal

PROOF OF SERVICE

J.R. Conkey & Associates, Inc. v. Walsh/deMaria Joint Venture V, et al.
 U.S.D.C., Northern District of California, San Jose Division
 Case No. 5:14-cv-03360

STATE OF CALIFORNIA)
) ss.
 COUNTY OF CONTRA COSTA)

I, Maggie Bedig, declare:

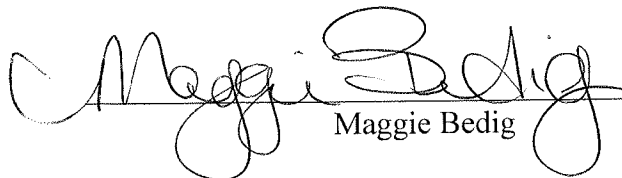
I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1277 Treat Blvd, Suite 600, Walnut Creek, California 94597. On January 8, 2015, I served a copy of the within document(s):

**STIPULATION TO RELATE CASES AND CONTINUE CMC AND [PROPOSED]
 ORDER**

- ☒ by electronic service, via United States District Court, Northern District of California's CM/ECF Document Filing System. This service complies with Local Rule 5-1.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Norco Overnight envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Norco Overnight agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

See attached service list.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on January 8, 2015, at Walnut Creek, California.


 Maggie Bedig

Service List

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Jeffrey B. Baird, Esq.
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Tel: 858.737.3100
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**[PLAINTIFF, THE UNITED STATES OF
AMERICA, for the use and benefit of J.R.
CONKEY & ASSOCIATES, INC.]**

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**[DEFENDANT, TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA]**